HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal Nos. 359, 360, 361, 362 & 363 of 2007

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Writ Appeal No.359 of 2007

Between:

R. Venkata Raju

…Appellant

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Higher Education Department,
Hyderabad & others

….Respondents.

Writ Appeal No.360 of 2007

Between:

K. Vijaya Gopal

…Appellant

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Higher Education Department,
Hyderabad & others

….Respondents.

Writ Appeal No.361 of 2007

Between:

M. Baby Sarojini

…Appellant

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Higher Education Department,
Hyderabad & others

….Respondents.

Writ Appeal No. 362 of 2007

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Between:

V.V. Satyanarayana Raju

…Appellant

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Higher Education Department,
Hyderabad & others

….Respondents.

Writ Appeal No. 363 of 2007

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Between:

V.B.S.S. Rama Krishnam Raju

…Appellant

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Higher Education Department,
Hyderabad & others

….Respondents.

:: J U D G M E N T ::

Counsel for the appellant in all the Appeals : Shri M. Pandu Ranga Rao

Counsel for respondent Nos.1 & 2: Government Pleader for Education

Counsel for respondent No.4 in all the appeals : Shri K. Chidambaram

April 30, 2007

Per G.S. SINGHVI, CJ

Whether the writ petitions filed by the appellants for quashing the termination of their services by the management of Col.D.S.Raju Polytechnic, Poduru (hereinafter referred to as 'the college') could be dismissed by the learned Single Judge on the ground of availability of alternative remedy despite the fact that the appellants had specifically taken the plea of mala fide exercise of power and violation of the rules of natural justice is the question which arises in these appeals filed under Clause 15 of the Letters Patent.

For the sake of convenient reference, we have taken the facts from the record of Writ Appeal No.359 of 2007.

The appellant was initially appointed as Assistant Lecturer in Col. D.S. Raju Polytechnic, Poduru (hereinafter referred to as 'the college') in July 1985. He was promoted as Lecturer on 1-10-1987 and as Head of Civil Engineering Department with effect from 3-10-1988. Subsequently, he was regularly promoted as Head of Civil Engineering Department. He also held additional charge of the post of Principal for different periods between 1989 and 1993.

In the year 2005, the appellant filed Writ Petition No.26745 of 2005 questioning notification dated 16-11-2005 issued by the management of the college for recruitment of Principal. By an order dated 15-12-2005 passed in WPMP No.34373 of 2005, a learned Single Judge of this Court stayed the appointment of the Principal.

In the meanwhile, Secretary and Correspondent of the college issued order dated 27-10-2005 whereby the appellant was placed under suspension. That order became subject matter of challenge in Writ Petition No.28193 of 2005, which was allowed by the learned Single Judge on 6-1-2006.

In an apparent bid to discipline the appellant and other similarly situated teachers, who had invoked jurisdiction of this Court on more than one occasion for vindication of their rights, the management of the college approached the Commissioner and Director of Technical Education (hereinafter described as 'the Director') and succeeded in persuading him to accord approval to the proposed retrenchment of the employees of Civil Engineering Department on the ground that intake in that department was 'nil' from the academic year 2003-04 and then issued proceedings dated 12-4-2007 terminating their services.

The appellant challenged the termination of his service in Writ Petition No.8051 of 2007 by contending that the action taken by the management of the college is arbitrary and mala fide and is vitiated due to violation of the rules of natural justice. In paragraphs 6 to 8 of the affidavit filed in support of the writ petition, the appellant averred as under:

> "6. It is necessary to submit here that the Polytechnics are also governed both by the A.P. Education Act, 1982 and All India Council for Technical Education Act. Permission has to be accorded by All India Council for Technical Education year to year for the approval of continuation of the Polytechnic. It is necessary to submit here that originally civil engineering was a coveted subject, but thereafter with the number of candidates decreasing for civil engineering and increasing for other disciplines like mechanical engineering, computer engineering, electrical and electronics engineering etc. there was nil intake in the civil engineering in the fourth respondent college. The All India Council for Technical Education increased the intake in Mechanical Engineering, Computer Engineering, Electronics & Commn. Engineering and Electrical and Electronics Engineering in 4th respondent college and directed to utilize the services of the

staff of Civil Engineering Department for teaching subjects like Engineering Drawing, Hydraulics, Mechanices of Solids etc. as they are the common subjects for all the disciplines by its order in F.No.TAD-10/2003/SRO/7545 dated 25th June, 2003 (Exhibit P2). Similarly when an approval has been granted by the AICTE by its order in F.No.AP-88-069/DIP/2006/8425 dated 18th July, 2006 (Exhibit P7) to similar polytechnic in West Godavari District, there were directions that the staff student ratio should be maintained as per AICTE norms and that the staff should be paid the AICTE pay scales. As the fourth respdnoent college was not paying AICTE pay scales, I along with another have filed Writ Petition No.25760 of 2005 seeking payment of AICTE Pay Scales and this Hon'ble Court by order dated 6.6.2006 in WPMP No.33129/2005 (Exhibit P6) directed the fourth respondent college to consider payment of the AICTE Pay Scales. So also, some other employees of the fourth respondent college filed writ petitions for AICTE Pay Scales. Angered at this, I and some other employees were kept under suspension without any reason at all. Questioning the orders of suspension, I have filed Writ Petition No.28193/2005 and others also have filed various writ petitions and this Hon'ble Court by a common order dated 06.01.2006 (Exhibit P4) finding that suspension was totally unwarranted directed that they should be reinstated into service. It is also necessary to submit here that continuation of the FAC Principal viz., the 5th respondent herein who is unqualified was also questioned. Therefore, action was initiated against some of the employees of the Institution and an Advocate was appointed as Enquiry Officer. Questioning the same, they have filed writ petitions and the same were allowed by this Hon'ble Court and as the respondent college could not prove the charges, no action was taken on any one of them.

7. In the mean time, the Commissioner of Technical Education issued Memo No.E3/1707/2000 dated 29.01.2000 (Exhibit P1) as there were no admissions in diploma course in Civil Engineering. In paragraph 2, it has been clearly stated that all the private unaided polytechnics have been informed that no retrenchment should be resorted particularly in the categories of Assistant Lecturers/ Demonstrators. As already mentioned, the AICTE directed that the persons in Civil Engineering should be accommodated in other disciplines where there was higher intake and accordingly all the persons in the civil engineering are handling classes in the subjects which are common in other disciplines. The workload for civil engineering staff in 4th respondent college is as follows:

Subjects	**Sections – Periods**	**Total**
1st Year		
Engineering Drawing	7 x 6 x 1	42
2nd Year		
Engineering Mechanics (M)	2 x 5 x 2	20
General Mech. Engineering (EE)	2 x 6 x 2	24
Environmental Studies (Comm)	7 x 3 x 2	42
Strength of materials (M)	2 x 6 x 2	24
Hydraulics & Hyd. Machinery (M)	2 x 5 x 2	20
Fluid Mech. & MT Lab (M)	2 x 6 x 1	12
3rd Year		
Industrial Management and Entreneurship (Commn.)	7 x 6 x 2	84
Total:		268

Allotted workload per head = 28 periods per week
Required staff for above load = 268/28 = 10

8. While the matter stood thus, out of ill-will and malice, behind my back it appears the Management addressed a letter to the Director of Technical Education, Andhra Pradesh, Hyderabad to accord approval for retrenchment of staff under Section 83 of the Education Act and he accorded approval and basing on the same the Secretary & Correspondent of the fourth respondent college issued orders dated 12.04.2007 (Exhibit P8) purporting to retrench me from service as Head of Civil Engineering Section with immediate effect. The entire thing has been done in violation of the principles of natural justice. When a person's livelihood is involved, he has to be heard before any action is taken. Such an unilateral action would be illegal and void. It is necessary to submit here that by virtue of the impugned orders, I will be thrown out of employment having put in more than 20 years of service. It is submitted that in fact presently there has been demand for Civil Engineering Course and the AICTE has given instructions to re-open Civil Engineering Branch. But the Management of the fourth respondent college is not taking any action to restore the Civil Engineering Section with a view to retrench the staff in the Civil Engineering Section. In fact the persons in the Civil Engineering department are permanent whereas the staff in other Engineering departments are temporary and they were not selected through Staff Selection Committee whereas we were selected through Staff Selection Committee. While continuing them in other branches, removing me and others in Civil Engineering Department are discriminatory and illegal. I submit that in fact there is work load for the staff of Civil Engineering and we are handling the same. In these circumstances, I am constrained to file this writ petition."

The other appellants also filed writ petitions to challenge the termination of their services on similar grounds.

At the hearing, learned Government Pleader and counsel representing respondent No.4 college raised an

objection to the maintainability of the writ petitions by contending that the petitioners have got an effective alternative remedy of appeal under Section 89 of the Andhra Pradesh Education Act, 1982 (for short, 'the Act'). The learned Single Judge accepted their objection and disposed of the writ petitions with the following directions:

> "The petitioners shall file appeal under Section 89 of the A.P. Education Act, 1982 assailing the orders dated 25.01.2007 passed by the Director of Technical Education and the consequential orders dated 12.04.2007 passed by respondent No.4 retrenching their services, accompanied with an application for stay, within a period of one week from today, and if such appeals are filed, the Government shall consider and dispose of the appeals and stay applications, in accordance with law, and pass appropriate orders thereon, within a period of two weeks thereafter. Till such time, the impugned orders dated 12.04.2007, passed by respondent No.4, retrenching the services of the petitioners shall stand stayed. Since it is stated by the learned Standing Counsel for respondent No.4 that respondent No.4 had already paid the retrenchment compensation to the petitioners. Respondent No.4 is at liberty to adjust the said amount against the wages payable to the petitioners."

Shri M. Pandu Ranga Rao, learned counsel for the appellants argued that the order under challenge is liable to be set aside because the view taken by the learned Single Judge on the issue of maintainability of the writ petitions is contrary to the law laid down by the Supreme Court. He pointed out that the appellants had challenged the termination of their services not only on the ground of arbitrariness and mala fide exercise of power by the management of the college, but also on the ground of patent violation of the rules of natural justice and argued that they could not have been non-suited on the ground of availability of alternative remedy of appeal. He submitted that arbitrary nature of the action taken by the management is evinced from the fact that despite the direction given by AICTE, it did not restart civil engineering courses and managed to terminate the services of the appellants. In support of his argument, Shri Pandu Ranga Rao relied on the judgments of the Supreme Court in **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**[1] and **M/s.Popcorn Entertainment & Anr. v. City Industrial Development Corpn.**[2]. He also submitted that the statement attributed to him about the effective nature of the alternative remedy available to the appellants is not correct and, as a matter of fact, he had not made any concession on this issue.

Learned Government Pleader and Shri K. Chidambaram reiterated that an effective alternative remedy is available to the appellants under Section 89 of the Act for redressal of their grievance against the action taken by the management of the college and argued that the learned Single Judge did not commit any error by directing them to avail that remedy.

We have given our most anxious consideration to the entire matter and are inclined to agree with Shri M. Pandu Ranga Rao that the learned Single Judge committed an error by relegating the appellants to the alternative remedy of appeal.

It is not in dispute that on the date of termination of their services, the appellants were holding permanent posts in the college and they had completed 10 to 20 years service. In the writ petitions filed by them, the appellants challenged the action of the management on the grounds of mala fides, arbitrary exercise of power, infringement of their right to livelihood and violation of the rules of natural justice. The learned Single Judge did not advert to the merits of the case and disposed of the writ petitions by relegating them to the alternative remedy of appeal.

Prima facie, there appears some substance in the contention of the appellants that the management of the college could not have packed them off without complying with the rule of audi alteram partem. In this connection, reference can usefully be made to the judgments of the Supreme Court in **Central Inland Water Transport Corpn. v. Brojo Nath Ganguly**[3], **Delhi Transport Corpn. v. D.T.C. Mazdoor Congress**[4] and **Basudeo Tiwary v. Sido Kanhu University**[5]. However, as the learned Single Judge has not examined the merits of the appellants' challenge to the termination of their services, we do not consider it proper to express any conclusive opinion on this issue.

We shall now consider whether the appellants could have been non-suited on the ground of availability of alternative remedy of appeal.

The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". In **Dwaraka**

Nath v. I.T. Officer[6], the Supreme Court considered the ambit and scope of Article 226 of the Constitution and observed:

> "Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England, but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Art. 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Court can function arbitrarily under this article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels."

The language of Article 226 does not contain any limitation on the High Court's power to issue direction, orders or writs including the prerogative writs, but in last 57 years, the superior courts have evolved several rules of self-imposed restraint including the one that the High Court will not entertain petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner. This rule is subject to the following three exceptions:

1) where the writ petition has been filed for enforcement of fundamental rights;
2) where there has been violation of the rules of natural justice; and
3) where the order or proceedings impugned in the writ petition are wholly without jurisdiction or the vires of an Act or other statutory provision is challenged.

In **State of U.P. v. Mohd. Nooh**[7], the Supreme Court observed as under:

> "But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

In **A.V. Venkateshwaran v. R.S. Wadhwani**[8], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Baburam v. Zilla Parishad**[9], the Supreme Court reiterated the rule of alternative remedy in the following words:

> "When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy,

and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **M/s.Popcorn Entertainment v. City Industrial Development Corpn.** (supra), the Supreme Court considered several judicial precedents on the issue of maintainability of writ petition in the backdrop of availability of alternative remedy and held that even in contractual matters, the High Court can entertain writ petition filed under Article 226 of the Constitution of India.

We may also refer to the judgment of the Supreme Court in **Century Spinning & Manufacturing Company Ltd. v. The Ulhasnagar Municipal Council**[10] wherein the Supreme Court, while reversing the order vide which the Bombay High Court summarily dismissed the writ petition filed by the appellant against the levy, assessment and collection of octroi by the respondent, observed as under:

> "The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any complicated questions of fact for determination, and the claim could not be characterised as frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the Court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried."

By applying the ratio of the above noted judgments to the case of the appellants, we hold that the learned Single Judge committed a serious error by relegating the appellants to the remedy of appeal ignoring the fact that they had challenged the action of the management of the college on the grounds of arbitrary exercise of power, mala fides, infringement of their right to livelihood and violation of the rules of natural justice.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside with the direction that the writ petitions shall be listed before an appropriate Single Bench for adjudication of the appellants' challenge to the termination of their services.

As a sequel to the above, WAMP Nos. 680, 681, 682, 683 and 684 of 2007 filed by the appellants for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

April 30, 2007

C.V.NAGARJUNA REDDY, J

svs

[1] (2003) 2 SCC 107

[2] 2007 (1) Decisions Today (SC) 297

[3] (1986) 3 SCC 156

[4] 1991 Supp. (1) SCC 600

[5] (1998) 8 SCC 194

[6] AIR 1966 SC 81

[7] AIR 1958 SC 86

[8] AIR 1961 SC 1506

[9] AIR 1969 SC 556

[10] (1970) 1 SCC 582